

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (22-057)**

Subject

Initiative petition from Sherri Talbott regarding a proposed constitutional amendment to Article IX. (Received August 25, 2021)

Date

September 14, 2021

Description

This proposal would amend Article IX of the Missouri Constitution.

The amendment is to be voted on in November 2022.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

Amy L. Blouin, President & CEO, Missouri Budget Project provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, they expect that they could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated this initiative petition has no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated the proposed initiative petition may negate the provisions of HB 349 and SB 86 (Sections 135.712 to 135.719 and sections 166.700 to 166.720) passed during the 2021 Legislative Session. HB 349 and SB 86 created a tax credit that begins at \$25 million and will grow to \$50 million annually when the program is fully implemented.

The Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act provides funds for the Emergency Assistance to Nonpublic Schools (EANS) program. The purpose of the EANS program is to provide emergency services or assistance to nonpublic schools to respond to the COVID-19. Section 312 of this Act requires the State Education Agency to administer the EANS program. In Missouri, this is the Department of Elementary and Secondary Education (DESE). An additional allocation was also made to nonpublic schools as part of the American Rescue Plan (ARP).

Missouri will receive \$67,550,224 of the EANS funds from CRSSA and \$68,641,868 from ARP to provide services and assistance to nonpublic schools. This petition could impact the distribution of these funds if Section 3(a) were interpreted to prevent the legislature from appropriating these funds to DESE for the purpose of providing the funds to nonpublic schools. However, these funds have either already been appropriated (CRSSA) or are anticipated to be appropriated (ARP) during the 2022 Legislative Session.

As of 9-3-21, below is the breakdown of CRRSA - EANS I funds that has been distributed in FY21 and FY22.

	FY2021	FY2022	GRAND TOTAL
EANS I (Non Public Schools)	\$2,719,128	\$6,077,408	\$8,796,536

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact on their department.

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no fiscal impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article IX.

Officials from the **Department of Revenue** indicated:

Revenue Impact

Section 2(c) in regards to the creation of an accreditation program for elementary and secondary schools will not fiscally impact their department.

Section 3(a) appears to be stopping any current or future school voucher program or school voucher tax credit program. It appears it would stop the HB 349/SB 86's Missouri Empowerment Scholarship Accounts Program". HB 349/SB 86 do not authorize vouchers, but, arguably, it implements tax credits with "the effect" of providing tuition subsidies and subsidizing other costs of a student attending non-public schools.

Section 135.713.1 provides a credit (of 100% of the contribution) to a taxpayer making a qualifying contribution to an educational assistance organization. Section 166.705.1 allows the parent of a qualified student to establish a scholarship account by entering into an agreement with an educational assistance organization, and it further provides that the qualified student "shall receive a grant, in the form of moneys deposited in accordance with section 135.714, in the qualified student's Missouri empowerment scholarship account." Per section 166.705.1(4), moneys in the scholarship account may only be used for:

- (a) Tuition or fees at a qualified school;
- (b) Textbooks required by a qualified school;
- (c) Educational therapies or services from a licensed or accredited practitioner or provider including, but not limited to, licensed or accredited paraprofessionals or educational aides;
- (d) Tutoring services;
- (e) Curriculum;
- (f) Tuition or fees for a private virtual school;
- (g) Fees for a nationally standardized norm-referenced achievement test, advanced placement examinations, international baccalaureate examinations, or any examinations related to college or university admission;
- (h) Fees for management of the Missouri empowerment scholarship

account by firms selected by the educational assistance organization; (i) Services provided by a public school including, but not limited to, individual classes and extracurricular programs; (j) Computer hardware or other technological devices that are used to help meet the qualified student's educational needs and that are approved by an educational assistance organization; (k) Fees for summer education programs and specialized after-school education programs; (l) Transportation costs for mileage to and from a qualified school.

Looking at this list of eligible uses of the grant money (which comes from donations that earn credits), it appears that the credits allowed under HB 349/SB 86 have the "effect of providing tuition subsidies or subsidizing other costs of student attendance or employment at non-public elementary or secondary schools."

The Empowerment program is currently set to begin on July 1, 2022 and has a starting cap of \$25 million annually. The cap however can be increased by the CPI annually until reaching \$50 million.

It should be noted that this petition would not be voted on until November 2022 and not be certified until December 2022 with an effective date of January 1, 2023 if adopted by the voters. Therefore their department notes the first year of Empowerment tax credits would be issued prior to this proposal stopping the credits. Therefore if adopted this would save the state the \$25 million annually starting in fiscal year (FY) 2024. This would be a savings to general revenue of the \$25 million annually.

This initiative petition prohibits the state from appropriating anything, paying for any program, or authorizing/implementing any voucher or credit. Their department is not aware of any other tax program that is appropriated, or any tax program the state pays for, or any tax credits, which will be impacted by this proposal.

Officials from the **Department of Public Safety - Office of the Director** indicated no impact for their department, Director's Office.

Officials from the **Department of Social Services** indicated this will have no fiscal impact for their department.

Officials from the **Governor's office** indicated this proposal addresses education tax credits. This proposal should not fiscally impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated there is no anticipated fiscal impact (cost or savings) to their department associated with this proposal.

Officials from the **Department of Transportation** indicated this initiative petition would have no fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal addresses uses of education tax credits.

The proposal does not carry a financial impact for the Office of Administration.

This proposal would prevent the authorization of state tax credits for private education costs. For the purpose of this fiscal note, Budget & Planning (B&P) assumes that if voter approved in November 2022, this proposal would go into effect January 1, 2023.

This proposal would prevent the authorization of all state tax credits that used to provide tuition or cost subsidies for students and staff at non-public elementary or secondary schools. This proposal would not prohibit tax deductions used for similar purposes.

Therefore, B&P notes that only one tax credit program would fall under this proposal. The Empowerment Scholarship program provides a tax credit for contributions made to scholarship accounts for the purpose of students attending a non-public elementary or secondary school. This program is scheduled to begin July 1, 2022 with an annual authorization limit of \$25 million. The authorization cap is increased over time by the rate of inflation, until total allowable authorizations reach \$50 million.

B&P notes that the Empowerment Scholarship program would begin July 1, 2022, while this proposal would not begin until January 1, 2023. For the purpose of this fiscal note, B&P will assume that the full \$25 million in credit authorizations for the first year would occur between July 2022 and December 2022. Therefore, this proposal could increase general revenue by \$25 million beginning with FY 2024.

This proposal would also prevent the appropriations of public funds for subsidizing the costs of students and employment at non-public elementary and secondary schools. This may impact the American Recovery Plan Emergency Assistance for Non-Public Schools. B&P defers to the Department of Elementary and Secondary Education for this impact.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2

RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7 million based on the cost of the 2020 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. Their office estimates \$75,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will have no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated:

Currently, pursuant to Truly Agreed to and Finally Passed (TAFP) House Bill (HB) 349, their office is tasked with numerous duties pertaining to the Missouri Empowerment Scholarship Program, which specifies a taxpayer may claim a tax credit for any qualifying contribution to an educational assistance organization, such contributions to be used to fund tuition scholarships for children to attend public or non-public elementary or secondary schools.

TAFP Senate Bill (SB) 86 caps the program at \$25 million in qualifying contributions in its first calendar year and specifies their office may use up to 4% of the total qualifying contributions received in a calendar year for marketing and administrative expenses or other costs incurred in administering the program. Their office shall annually adjust the cap for inflation, such annual increases shall cease when the amount of tax credits reach \$50 million. Thus, assuming maximum contributions and that the program eventually reaches the \$50 million cap, the maximum their office could receive in the future is \$2,000,000 for marketing and administrative purposes.

Assuming the maximum amount of qualifying contributions are received in the first year (\$25 million), 4% of that would be \$1,000,000.

Because this IP, if passed, would render these provisions of HB 349 and SB 86 unconstitutional, the fiscal impact to their office would be anywhere from \$0 - \$1,000,000 in the first year, depending on the amount of qualifying contributions received in the first year. Once inflation adjustments increase the program cap to the maximum, the maximum fiscal impact to their office would be up to \$2,000,000, again depending on the amount of qualifying contributions received from participating taxpayers. The fiscal impacts provided relate to reduced revenues and reduced costs.

FYSA (For your situational awareness) -- While their office was only asked to review for any fiscal impact to their office, because this IP directly impacts the Missouri Empowerment Scholarship Program that was enacted in HB 349 and SB 86, the fiscal notes for those bills may include pertinent information regarding the potential fiscal impact to other state entities.

Officials from **Clay County** indicated they estimate no fiscal impact on their county as a result of this measure.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from the **City of Kansas City** indicated this amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no negative fiscal impact to their college.

Amy L. Blouin, President and CEO, Missouri Budget Project provided the following information:



The Honorable Nicole Galloway, CPA
P.O. Box 869
Jefferson City, MO 65102
Via email to: fiscalnote@auditor.mo.gov

RE: Fiscal Analysis for Initiative Petition 2022-057

Dear Auditor Galloway,

Please accept the following comments on the fiscal impact of the Taxpayers Accountability Initiative Petition 2022-057.

Petition 2022-057 would amend Article IX, Section 3(a) regarding state support of free public schools by adding a prohibition on the expenditure of public funds for vouchers or tax credits that have the purpose of subsidizing costs of attendance or employment at non-public schools. The petition seeks to prohibit future expenditures for these purposes but would also prohibit any related tax credit programs enacted by previous legislation, including House Bill 349 and Senate Bill 86 which were approved by lawmakers in the 2021 State Legislative Session.

House Bill 349 and Senate Bill 86 would enact tax credits, paid for by a reduction in state general revenue, for the precise purpose of creating subsidies for attendance at non-public schools (vouchers). The tax credits are capped at \$50 million annually when fully implemented.

Because Petition 2022 – 057 would prohibit public expenditures for this tax credit/voucher program, we can assume passage of the petition would result in **\$50 million in general revenue savings annually**.

The Petition would also prohibit any additional increases in these credits and/or creation of new credits or vouchers that would use public funding for the same purpose. Trends from other states that have enacted similar credits/vouchers indicate that their expense tends to grow significantly over time, some examples:

- **Indiana** enacted a voucher program in the 2011-2012 school year that initially cost \$15.5 million. But, by the 2017-2018 school year the voucher program grew to a cost of \$154 million – nearly 10 times the original cost.¹

¹ Georgia Budget and Policy Center, “Shifting Public Funds to Private Schools: High Costs, Poor Track Record”, April 26, 2018

- **North Carolina’s “Opportunity Scholarship”** was initially capped at \$10.8 million per year. Lawmakers approved legislation in 2016 that will increase the \$144.8 million per year – more than 13 times the original cost.²
- Total spending on all voucher programs in **Ohio** increased from about \$25 million in fiscal year 2006 to over \$250 million in 2016 – 10 times the original costs.³

These trends indicate that the general revenue savings from Petition 2022-057 are also likely to grow over time as lawmakers approve increases in the caps as other states have done. As a result, the **general revenue savings from Petition 2022-57 will most likely well exceed \$50 million annually.**

We appreciate your consideration of this information.

Sincerely,

Amy L Blouin
President & CEO
Missouri Budget Project
ablouin@mobudget.org

² North Carolina Justice Center, “Legislative changes to voucher program will likely drain \$272 million from NC over next decade”, December 21, 2020

³ Policy Matters Ohio, “Expanding vouchers chips away at public schools”, June 5, 2017

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, University of Missouri, and St. Louis Community College.**

Fiscal Note Summary

State governmental entities expect saving of \$25 million to \$50 million annually. Local governmental entities estimate no costs or savings.